

Present : Mr. Justice Middleton.

1909.
August 23.

SUTHUKKUMMAH v. VACHCHIRAVAGEE et al.

C. R., Batticaloa. 5,904.

Prescription—Death of payee—Non-interruption—Grant of administration—“Bond”—Prescription Ordinance (Ordinance No. 22 of 1871), ss. 6 and 7.

Where prescription has once begun to run against the payee on any instrument, it is not interrupted by the subsequent death of the payee, and the period between the death of the payee and the grant of administration should not be deducted.

*Kulendoeveloe v. Kandeperumal*¹ distinguished.

Where an instrument was duly stamped as a bond, but was not notarially attested,—

Held, that such instrument was not a “bond” within the meaning of section 6 of Ordinance No. 22 of 1871.

A PPEAL by the defendant from a judgment of the Commissioner of Requests (G. W. Woodhouse, Esq.).

The facts sufficiently appear in the judgment.

Sansoni (E. H. Prins with him), for the defendants, appellants.

Sampayo, K.C., for the plaintiff, respondent.

Cur. adv. vult.

August 23, 1909. MIDDLETON J.—

This was an action on a document obligatory marked A and dated July 26, 1901, for Rs. 100, by the endorsee from the deceased payee's administrator against the makers. The defence was prescription by a six years' limit under section 7 of Ordinance No. 3 of 1871.

The Commissioner of Requests, on the admission of both parties that the document came within the terms of section 7 of Ordinance No. 21 of 1871, held that it was not prescribed, as he agreed with counsel for the plaintiff that the period between the death of the payee and the grant of letters of administration should be deducted, and on the authority of *9 N. L. R. 350*, which he critically conceded to be sound law, gave judgment for the plaintiff. It was contended by counsel for the appellants that this decision was wrong, and it was admitted to be so by the learned counsel for the respondent.

The Commissioner of Requests seems to have overlooked the fact that the prescription had begun to run before the death of the payee himself, and could not be interrupted by the payee's death or the non-appointment of an administrator to his estate. In the case

¹ (1905) 9 N. L. R. 350.

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relied on the cause of action arose after the death of the intestate. It was contended, however, before me for the respondent that the document in question did not come under section 7, but under section 6 of the Ordinance, as a bond conditioned for the payment of money, and would have a ten years' limit. Counsel for the appellant referred me to *Tissera v. Tissera*,¹ and counsel for the respondent to a case in *Wendt's Reports*, p. 297, and the Stamp Ordinance, No. 3 of 1890.

The document apparently is stamped as a bond not over Rs. 100 with a twenty-five cent stamp, but it is not notarially executed. The amount mentioned in it was assigned by deed dated November 6, 1908, notarially executed apparently as appearing from the endorsement.

I have looked unto the case of *Suppramaniapillai v. Kalikutty*,² where I followed the case of *Tissera v. Tissera*,¹ and referred to the case in *Wendt's Reports* as supporting my view there, that the document in question which was notarially executed was a bond within the meaning of section 6. The present document, in my opinion, does not fall within the category of a bond conditioned for the payment of money, though it may have been stamped as such as a matter of precaution.

In my view the document is a written agreement not falling within the description of instruments set forth in section 6, and is subject to the terms of section 7 prescribable after the expiration of six years from the date of the breach of its terms, which would be on October 26, 1907.

In my opinion, therefore, the judgment of the Commissioner of Requests must be set aside, and the action dismissed with costs in both Courts.

Appeal allowed.

¹ (1896) 2 N. L. R. 238.

² (1908) 11 N. L. R. 71.